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TTAB

Hearing:  
23 MAR 2005

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May 23, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Beverly A. Dougherty

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Serial No. 76454775

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David E. Dougherty of Dennison, Schultz, Dougherty &  
MacDonald for Beverly A. Dougherty.

Jeri Fickes, Trademark Examining Attorney, Law Office 108  
(David Shallant, Managing Attorney).<sup>1</sup>

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Before Hohein, Bucher, and Drost, Administrative Trademark  
Judges.

Opinion by Drost, Administrative Trademark Judge:

On September 26, 2002, Beverly A. Dougherty  
(applicant) applied under the intent-to-use provisions of  
the Trademark Act to register the mark FINE LETTERS, in  
standard character form, on the Principal Register for  
"custom writing services" in Class 41.

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<sup>1</sup> Trademark Examining Attorney Nicholas Altree argued the appeal.

The examining attorney refused registration on the ground that the mark was merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), because applicant's proposed mark is "a laudatory phrase [that] describes a potential likely product of applicant's services - letters. The term 'fine' is frequently used to describe the high quality of products, such as 'fine wine' and 'fine jewelry,' and might equally as well be used to describe the product of writing, such as 'a fine essay,' 'a fine letter,' [or] 'a fine brief.'" Brief at 3.

In response, applicant argues that FINE LETTERS "does not tell the potential customer only what the goods/services are." Brief at 2 (emphasis added). Applicant also argues that there are numerous individual meanings of the words "Fine" and "Letters" and the words "as a whole create certain ambiguities." Brief at 6. Furthermore, applicant maintains that the mark is a double entendre.

When the examining attorney made the refusal final, applicant appealed to this board. An oral hearing was held March 23, 2005.

A "mark is merely descriptive if the ultimate consumers immediately associate it with a quality or characteristic of the product or service." In re MBNA

America Bank N.A., 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003). See also In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980).

Applicant argues that there are eleven definitions each of the terms "Fine" and "Letters" resulting in 121 possible combined meanings of the combined terms, "and no single meaning for the phrase is immediately apparent." Brief at 5. However, descriptiveness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is sought. In re Abcor Dev. Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). Common words often have multiple meanings but just as the terms "gas" and "badge" could have numerous meanings, in Abcor, the court looked at the meaning of the term in relation to the goods in that case.

For a mark to be merely descriptive, a term need only describe a single significant quality or property of the goods. Gyulay, 3 USPQ2d at 1009; Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959). The examining attorney relies on the following definitions of the terms "Fine" and "Letters" to establish that applicant's term describes the services.

## **fine1**

**fine** (fīn) *adjective*

**fin-er, fin-est**

1. Of superior quality, skill, or appearance: *a fine day; a fine writer.*
2. Very small in size, weight, or thickness: *fine type; fine paper.*
3. **a.** Free from impurities. **b.** *Abbr. f., F. Metallurgy.* Containing pure metal in a specified proportion or amount: *gold 21 carats fine.*
4. Very sharp; keen: *a blade with a fine edge.*
5. Thin; slender: *fine hairs.*
6. Exhibiting careful and delicate artistry: *fine china.* See synonyms at *delicate.*
7. Consisting of very small particles; not coarse: *fine dust.*
8. **a.** Subtle or precise: *a fine difference.* **b.** Able to make or detect effects of great subtlety or precision; sensitive: *has a fine eye for color.*
9. Trained to the highest degree of physical efficiency: *a fine racehorse.*
10. Characterized by refinement or elegance.
11. Being in a state of satisfactory health; quite well: *I'm fine. And you?*

## **let-ter**

**let-ter** (lĕt'ər) *noun*

1. A written symbol or character representing a speech sound and being a component of an alphabet.
2. A written or printed communication directed to a person or an organization.
3. Often **letters**. A certified document granting rights to its bearer.
4. Literal meaning: *had to adhere to the letter of the law.*
5. **letters** (*used with a sing. verb*). **a.** Literary culture; belles-lettres. **b.** Learning or knowledge, especially of literature. **c.** Literature or writing as a profession.
6. *Printing.* **a.** A piece of type that prints a single character. **b.** A specific style of type. **c.** The characters in one style of type.
7. An emblem in the shape of the initial of a school awarded for outstanding performance, especially in varsity athletics.

*verb*

**let-tered, let-ter-ing, let-ters** *verb, transitive*

1. To write letters on.
2. To write in letters.

*verb, intransitive*

1. To write or form letters.
2. To earn a school letter, as for outstanding athletic achievement: *She lettered in three collegiate sports.*

As the case law indicates, we must consider the definitions in relation to the goods or services for which

applicant seeks registration. In this case, the services are "custom writing services" and, therefore, we must determine whether the term FINE LETTERS describes a feature or characteristics of custom writing services.

The first definition<sup>2</sup> of "fine" is "of superior quality, skill, or appearance: a fine day; a fine writer." A "letter" is defined as "a written or printed communication directed to a person or an organization." The examining attorney argues (Brief at 3) that "Fine" is a laudatory term and "[l]audatory terms, those which attribute quality or excellence to goods or services, are equivalent to other descriptive terms." The Federal Circuit has held that "[l]audatory marks that describe the alleged merit of the goods are descriptive because they simply describe the characteristics or quality of the goods in a condensed form." In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

Applicant acknowledges the laudatory nature of two of the definitions: "Clearly, of the eleven definitions listed only two could be construed as being laudatory with respect to Applicant's custom writing services." Response

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<sup>2</sup> "Any competent source suffices to show the relevant purchasing public's understanding of a contested term or phrase." Nett Designs, 57 USPQ2d at 1566 (Dictionary).

dated September 24, 2003 at 4. Most of the other definitions are simply not relevant in this case, e.g., "free from impurities," "very small in size, weight, or thickness," "consisting of very small particles," "trained to the highest degree of physical efficiency," "tiny, slender" and "being in a state of satisfactory health." Others are also laudatory like the first definition, e.g., "exhibiting careful and delicate artistry" and "characterized by refinement or elegance." Therefore, the definitions are either not relevant to custom writing services or they create similar descriptive meanings.

Also, while the term "letter" may refer to "an emblem in the shape of the initial letter of a school awarded for outstanding performance, especially in varsity athletics," "a piece of type that prints a single character," and "literal meaning," in the context of custom writing services, the term "letters" would mean "written or printed correspondence directed to a person or an organization." Obviously, one utilizing the services of a custom writing service may be seeking the preparation of letters of a personal or business nature. Clearly, these services are included within the identification of her services as "custom writing services."

To the extent that applicant can point to additional, descriptive meanings of the term "Fine Letters," such meanings do not demonstrate that the term is suggestive rather than merely descriptive. For example, the term "Hot" would be descriptive for food that is served at a high temperature even though "hot" may also describe food that is spicy. Even if a party serves very warm, spicy food, the term "hot" would remain descriptive of the foods.

While we have found that the terms "fine" and "letters" describe applicant's services, in order to be merely descriptive, we must consider the mark in its entirety. P.D. Beckwith, Inc. v. Commissioner, 252 U.S. 538, 545-46 (1920). However, "[i]t is perfectly acceptable to separate a compound mark and discuss the implications of each part thereof ... provided that the ultimate determination is made on the basis of the mark in its entirety." In re Hester Industries, Inc., 230 USPQ 797, 798 n.5 (TTAB 1986).

When we view the mark in its entirety, we conclude that the term FINE LETTERS would describe a significant feature of applicant's custom writing services to the extent that these services would include helping clients prepare high quality letters or "fine letters." The terms "fine" and "letters" in connection with custom writing

services are definite terms and not nebulous. The term "Fine" meaning "of superior quality" immediately informs purchasers that applicant considers her letter-writing services to be superior. See Nett Designs, supra (THE ULTIMATE BIKE RACK found to be merely descriptive); In re Boston Beer Co. L.P., 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999) (THE BEST BEER IN AMERICA highly laudatory and descriptive).

Applicant argues (p. 2) that "[w]hen coupled with letters as in the alphabet, fine would mean a thin, precise or ornate display such as a sign or printing."

Specifically, applicant argues (p. 3) that she envisioned:

Those exquisitely illuminated letters that medieval monks produced, as they toiled in their fingerless gloves in front of the brightest natural light of the scriptorium in order to replicate in fine art what the greatest medieval minds created in thoughts and words.

Quite simply, we find this argument hard to accept. First, applicant has not submitted any evidence that the work products of these medieval monks were known as "Fine Letters" or that prospective purchasers are likely to make that connection. Second, even if applicant had this connection in mind when she selected the mark, if prospective purchasers are not aware of an additional meaning, it does not establish that the mark is not descriptive.

Furthermore, applicant maintains (Brief at 8) that the term FINE LETTERS is a double entendre.

Applicant recognizes that the multiple interpretations that make an expression a "double entendre" must be an association that the public would make fairly readily. However, in the present case, the public would readily associate Applicant's mark with printing and other services as suggested above, and not with custom writing services such as marketing letters and the like.

As discussed above, it is difficult to discern a non-descriptive meaning that applicant's mark calls to mind. A mark that is a double entendre "does not tell the potential purchaser *only* what the goods are, their function, their characteristics or their use, or, of prime concern here, their ingredients." In re Colonial Stores Inc., 374 F.2d 549, 157 USPQ 382, 385 (CCPA 1968) (SUGAR & SPICE for bakery products not merely descriptive). See also In re Priefert Mfg. Co., 222 USPQ 731, 733 (TTAB 1984) (The "term HAY DOLLY [is] reminiscent of the famous Broadway hit "HELLO DOLLY"). Here, FINE LETTERS merely tells prospective purchasers about the superior quality of the letters her services would produce. Even if in the abstract, potential purchasers would associate the term "Fine Letters" with other services, we must consider the question of descriptiveness in relationship with applicant's identified services. Viewed in this way,

potential purchasers of custom writing services would immediately understand the descriptive significance of the term "Fine Letters" and any other, non-descriptive meaning of the term would not be readily apparent. Therefore, we cannot accept applicant's argument that the presence of a double entendre means that the mark is registrable on the Principal Register.

Decision: The refusal to register is affirmed.